

Notice of Allowability

Application No.

09/461,900

Examiner

Dwin M. Craig

Applicant(s)

NACE ET AL.

Art Unit

2123

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/12/2005.
2. ☒ The allowed claim(s) is/are 1-33 and 39.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

And

EXAMINER'S REASONS FOR ALLOWANCE

1. Claims 1-33 and 39 are allowed.
2. Claims 34-38 and 40 are cancelled.
3. William Thomson is no longer the Examiner of record; Dwain Craig is now the Examiner of record.

Examiner's Reasons for Allowance

4. The following is an examiner's statement of reasons for allowance:
 - 4.1 After reviewing Applicants' Appeal brief, submitted on 3/16/2005 the Examiner has determined that Applicants' claims are allowable. As regards independent claims 1, 16 and 20 and using independent claim 1 as an example, the allowability, at least in part, resides in the combination of the following limitations, "*a record module having a filter that resides on a server*" in combination with "*a data collector file that stores the recorded network characteristics for playback on a playback machine.*" The Examiner notes that in the Appeal brief submitted on 3/16/05 on page(s) 3 and 4 that Applicants' persuasively argued that the cited prior art references fail to disclose or make obvious the expressly claimed limitation of "*a record module having a filter that resides on a server*". Further, the Examiner notes that after a new prior art search, that specific limitation is not disclosed nor is there provided a proper motivation to combine another teaching to disclose or teach the particular limitation of "*a record module having a filter that resides on a server*".

4.2 As regards independent claim 39, the allowability at least resides in the combination of the following limitations, *“a record module located on a server on the computer network”* in combination with, *“wherein the custom-generated log file is not a server log file of the server”*.

The Examiner notes that in the Appeal brief submitted on 3/16/05 on page(s) 3 and 4 that Applicants' persuasively argued that the cited prior art references fail to disclose or make obvious the expressly claimed limitation of *“a record module located on a server on the computer network”*. Further, the Examiner notes that after a new prior art search, that specific limitation is not disclosed nor is there provided a proper motivation to combine another teaching to disclose or teach the particular limitation of *“a record module located on a server on the computer network”*, wherein the record module generates a custom-generated log file that is not a server log file of the server.

4.3 As regards dependent claims 2-15, 17-19 and 21-33 they are allowed as they depend on an allowed base claim.

4.4 Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US Patent 6,308,146 discloses playback modules for recording simulated activity for the purposes of testing computer applications, (see figures 3B, 4C and 5-15 and the Abstract). It is

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noted by the Examiner that this reference contains no network simulation or the teaching of a server log file.

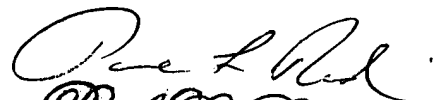
US Patent 6,253,337 discloses filtering of network packets (Figure 3 item 30) and Device Drivers that are filtering network traffic (Col. 11 lines 54-67 and Col. 12 lines 1-3), however there is no teaching or suggestion of a playback module.

5.1 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwin M. Craig whose telephone number is (571) 272-3710. The examiner can normally be reached on 10:00 - 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo P. Picard can be reached on (571) 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DMC


Paul L. Rodriguez 11/14/05
Primary Examiner
Art Unit 2125